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09/898,341	07/03/2001	David A. Jones	659/866	2473

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/898,341  
Filing Date: July 03, 2001  
Appellant(s): JONES ET AL.

**MAILED**  
DEC 17 2004  
**GROUP 1700**

Amanda M. Church and Jonathan P. Taylor  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 2, 2003.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: The issue raised by the rejection of claims 18-20 under 35 USC 112, second paragraph in view of the arguments made in Appellant's Brief.

**(7) Grouping of Claims**

The appellant's statement in the brief that certain claims, 1,4-17, 21-22; 2-3; and 18-20 do not stand or fall together is not agreed with because no reasons were given as why the claims do not stand or fall together. It is noted that merely pointing out the differences what the claims cover is not an argument as to why the claims are separately patentable, see MPEP 1206 .

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

2,996,424	Voigtman et al	8-1961
3,014,832	Donnelly	12-1961
2,785,067	Osberg	3-1957
5,246,545	Ampulski et al	9-1993
5,730,839	Wendt et al	3-1998
6,027,611	McFarland et al	2-2002

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:  
results are obtained by the present invention.

1. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voigtman et al (2,996,424) or Donnelly (3,014,832) taken in view of Osberg (2,785,067), admitted state of prior art as stated on pages 1,2 and 5 of the instant specification and Ampulski et al (5,246,545) or Wendt et al (5,730,839).

Voigtman et al discloses the application of a release agent onto tissue paper web to penetrate through to the surface of the web facing the drier surface prior to creping the tissue web from the drier surface, column 5, lines 36-46. The release agent is used in the form of a water dispersion or emulsion, column 4, lines 31-38. Ketene dimer is disclosed as a suitable release agent and is used by example in Examples I and II. It is applied as an aqueous emulsion. Other agents disclosed are certain surfactants

including "rewetting" agents, silicone emulsions, mineral oil and fatty acid emulsions. The amount of release agent applied to the web varies from 0.5 to 50 pounds/ton tissue web, column 7, lines 19-33. The release agent may be selected to impart characteristics or properties of the release agent to the tissue web and these include absorbency and softness. Multiply product is disclosed in column 1, lines 38-71.

Donnelly is similar to Voigtman et al in that a release agent is applied to the tissue web prior to creping from the drier surface, last paragraph of column 5. A water dispersion of release agent is contemplated, column 4, lines 31-38. Ketene dimer is a suitable release agent as well as others of the type disclosed in Voigtman et al, column 5, lines 10-22. It is applied at a rate of between 0.001 and 25 pounds/ton of tissue web. The release agent selected may be selected to impart the characteristic or property of the release agent, column 1, lines 63-66 and column 5, lines 57-59. It is noteworthy that Donnelly teaches the incorporation of an additional component to enhance the property of the tissue web, a cationic softener to a mineral oil (release agent) and water emulsion, Example 1, column 8.

Both references are silent as to the joint use of a surfactant with ketene dimer. Since both references teach a water dispersion or emulsion of the release agent and Donnelly further teaches that it advantageous to employ additional component to enhance properties of the tissue, it would have been obvious to use a surfactant to create an aqueous dispersion of ketene dimer. It is also conventional practice in the art when making aqueous dispersion or emulsion of ketene dimers as evidenced by Osberg. And as noted by Ampulski et al in column 11, lines 18-23, papermaking

additive that is emulsified using a surfactant emulsifier has the advantage having the dispersion agitated to prevent or inhibit separation of the additive and water phase. Moreover, in view of the fact that Donnelly further teaches additional components to improve the properties of the tissue, it would have been especially obvious to use a surfactant that not only emulsifies the ketene dimer but also enhances absorbency and softness. In as much as ketene dimer is normally a hydrophobic sizing agent, which reduces the wettability as further evidenced by pages 1 and 2 of the instant specification, it would be especially obvious to select a surfactant that would enhance absorbency or wettability of the tissue paper to offset loss created by the presence of the ketene dimer.

Ampulski et al recognize offsetting the adverse effect on wettability of tissue paper by hydrophobic softeners such as polysiloxane in tissue paper with the addition of a surfactant. Thus, there is additional motivation to one of ordinary skill in the art to employ a surfactant in amount not only to emulsify the ketene dimer but also to improve the wettability. The claimed absorbency rate or wettability of claims 9 and the degree of sizing, i.e., lack thereof, of claim 17 would have an obvious matter of optimization of the degree of wettability controlled by the amount of surfactant and ketene dimer used in the manner suggested by Ampulski et al and Donnelly or Voigtman et al.

In regard to claims 4-8, Wendt et al evidences the fact that multilayer tissue products having a layer of hardwood and another layer of softwood fibers are conventional in the art and in as much as both Voigtman et al and Donnelly contemplate multiply hence multilayer products it would have been obvious to employ separate

layers of hardwood, and softwood fibers which corresponds to the claimed "short " fibers and "long" fibers, respectively, in Voigtman et al or Donnelly. Note that Wendt et al shows that it is also well known to have more than two layers, column 5, lines 10-44.

In regard to claims 18 and 20, for the purposes of this rejection, it is assumed that the ketene dimer and surfactant is added to the web of fibers in view of the fact that claim 20 which depends from claim 18 in contrast to that claim which adds the ketene dimer prior to removal of the water. Appellant acknowledges that there is no order to the addition recited in claim 18.

2. Claims 18-20 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,027,611. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims are open to multi-suspension headbox for making the absorbent paper.

**(11) Response to Argument**

1. It is urged in regard to the rejection of the claims 1-22 that Donnelly and Voigtman do not teach equivalency of the their disclosed release agents. The arguments are based primarily on what the individual references disclose and not what they suggest as a whole. Voigtman et al and Donnelly specifically disclose the use of ketene dimer and water dispersions of release agents. The rejection is based on the fact that ketene dimer is hydrophobic and reduces wettability of paper . One of ordinary skill in the art would look to well known prior art solutions to offset this effect when making absorbent tissue paper. Ampulski et al is cited for teaching of providing a

surfactant to not only offset the hydrophobic property of an additive used in making absorbent tissue paper but also serves to emulsify the hydrophobic additive. As already noted ketene dimers are ordinarily supplied in surfactant emulsified form. Thus, the prior art as a whole as set forth in the above rejection provides motivation for using a surfactant with the ketene dimer in Voigtman et al and Donnelly.

2. The argument presented against the rejection of claims 4-8 is the broad assertion that the combination of Donnelly, Voigtman et al, Ampulski and presumably Osberg does not show every element of the claimed invention alone or in combination and therefore the combination does not meet or establish a prima facie case of obviousness and Wendt et al does not show or suggest the claimed invention. This is not convincing for reasons given in the rejection.

3. Appellant broadly asserts that the prior art does not show or suggest the limitations of claims 18-20. This is not convincing for the reasons given in the above rejection.

4. The arguments made against the judicially created obviousness type double patenting rejection of claims 18-20 over the claims of McFarland are not convincing. Appellant has urged that the method claims be given the broadest possible interpretation. The claims are open to the surfactant and multilayer headbox claimed in McFarland.



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For the above reasons, it is believed that the rejections should be sustained.





Respectfully submitted,

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December 10, 2004

Conferees

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